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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 417

DISTRICT OF COLUMBIA, *Petitioner*,

v.

CLIFFORD G. BECKHAM, MABEL V. BECKHAM, *Respondents*.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR REHEARING

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To the Honorable, the Chief Justice of the United States, and
the Associate Justices of the Supreme Court of the United
State:

PRELIMINARY STATEMENT

The petitioner in the above entitled cause requests this Hon-
orable Court, pursuant to Rule 33 of the Revised Rules of

this Court, to grant a rehearing on the petition for certiorari, and, upon reconsideration, to grant the petition.

In its petition for certiorari, which was denied November 17, 1947, petitioner urged as reasons for granting the writ that:

1. The United States Court of Appeals for the District of Columbia has not given proper effect to the decision of this Court in the case of *District of Columbia v. Murphy*, 314 U. S. 441, 86 L. ed. 329, 62 S. Ct. 303.

2. The Court of Appeals has decided an important question of local law in conflict with its prior decisions following the *Murphy* case.

THE DECISIONS OF THIS COURT AND THE COURT OF APPEALS

The question involved pertains to the methods of determining a person's domicile for District of Columbia income tax purposes. Mr. Justice Edgerton, in his dissenting opinion, said (R. 27, 28):

"In *District of Columbia v. Murphy*, 314 U. S. 441, the Supreme Court said: 'We hold that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled. * * * The intention to return must be unconditional. * * * In order to retain his former domicile, one who comes to the District of Columbia to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service.' (pp. 454, 455, 456)

"The petitioners live here. The Court ruled in the *Murphy* case that 'The place where a man lives

is properly taken to be his domicile until facts adduced establish the contrary.' The question therefore is whether the Board was clearly wrong in failing to find that the petitioners had proved that they had a 'fixed and definite,' an 'unconditional,' intent to return to Texas when Clifford G. Beckham is separated from the service.

"I think the Board was right. * * * *According to his own testimony, therefore, his intent to return to Texas was conditional* on (1) the age at which he might be separated from the government service and (2) the comparative employment opportunities here and in Texas that he might then find. This testimony was not contradicted." (Emphasis supplied.)

"An intent to return to a former home, subject only to some highly improbable contingency, would doubtless be fixed and definite, rather than conditional, within the meaning of the rule. Perhaps all intents to return are subject to some highly improbable contingencies. But considerations of that sort do not decide this case. An employee's intent to return to his former home when he retires from government service may well be subject *only* to contingencies that clearly appear to be highly improbable. But the intent of Clifford G. Beckham to return to Texas is subject to a contingency that does not clearly appear to be at all improbable. It seems to me a paradox to say that this qualified intent is clearly fixed, definite, and unconditional."

Justice Edgerton undoubtedly was of opinion that the majority decision in the present case was contrary to this Honorable Court's pronouncements in the *Murphy* case, where it was said (314 U. S. 456):

"In order to retain his former domicile, one who comes to the District to enter Government service must *always* have a *fixed* and *definite* intent to return and take up his home there when separated from the service. A mere sentimental attachment will not hold the old domicile. *And residence in the District with a nearly equal readiness to go back where one came from, or to any other community offering advantages upon the termination of service, is not enough.*

"One's testimony with regard to his intention is, of course, to be given full and fair consideration, but is subject to the infirmity of any self-serving declaration, and may frequently lack persuasiveness or *even be contradicted or negatived by other declarations and inconsistent acts.*" (Emphasis supplied.)

This Court further said in footnote 9 of the *Murphy* case (314 U. S. 455):

"* * * While the intention to return must be fixed, the date need not be; while the intention to return must be unconditional, the time may be, and in most cases of necessity is, contingent. * * *"

The Court of Appeals, in deciding this case, has prescribed a *condition* in the determination of domicile when it said (R. 27):

"* * * Any honest witness—and no question of the veracity of the Beckhams is here raised—testifying to a fixed intention to return to a former abode at the

end of Government service would be bound to admit, if questioned, that he *might* remain in the District if at some future time it was made substantially to his advantage to do so; or that if he were to reach an advanced age before his Government service ended, he might not depart. * * * " (Emphasis *not* supplied.)

The Court of Appeals in holding that an employee in Government service who testifies "that he *might* remain in the District if at some future time it was made substantially to his advantage to do so" is contrary to the plainly expressed requirements of retaining one's domicile at a former place of abode and, if allowed to stand, has the effect of nullifying or overruling the *Murphy* case. Thus the majority decision of the Court of Appeals is of tremendous significance to residents in the District of Columbia and to the officials of the District who are charged with administration of the tax laws and collection of the District's revenues.

REASON FOR REHEARING AND GRANTING THE WRIT OF CERTIORARI

As counsel for petitioner pointed out in their brief in support of petition for certiorari, the conflict between the decision of the Court of Appeals in the present proceeding and its earlier decisions, if the lower Court's decision in the present case is allowed to stand, places residents of the District of Columbia and the District tax officials in a serious quandary. None will know on what basis the domicile of a person residing in the District of Columbia is to be determined for tax purposes. No further reliance can be made upon the pronouncements of this Honorable Court in the *Murphy* case if the present decision of the Court of Appeals becomes final. The bare statement of any person to the effect that he intends to return to the place

of his former abode outside the District of Columbia, without regard to the various relevant indicia of domicile as to where his true home is, would be sufficient to retain a domicile outside the District.

While the Congress, in enacting the District of Columbia Income and Franchise Tax Act of 1947,¹ has provided a means by which Federal officials and employees may escape District of Columbia income tax as to their Federal salaries by the filing of affidavits of domicile outside the District of Columbia,² it also recognized that such officials and employees must have had domiciles outside the District immediately prior to the beginning of the taxable year. The Conference Report³ relating to the specific question under the 1947 Act recognized that the question of domicile raised by any officer or employee of the Federal Government could be litigated. If merely a declaration of intention relieves a Federal employee of individual income tax liability under the 1939 Act, so, it would seem, does the 1947 Act, and the words of the Managers on the part of the House would be meaningless.

In view of the foregoing, the fundamental question presented in the present case is not where the respondents were domiciled during the tax years involved but whether the *Murphy* case decided by this Honorable Court has been overruled by the United States Court of Appeals and consequently what is the test of determining a person's domicile in the District of Columbia.

¹ Article I of Public Law 195, 80th Congress, approved July 16, 1947.

² Section 4(s), Title I, District of Columbia Income and Franchise Tax Act of 1947.

³ House Report No. 801, July 7, 1947, of the Managers on the part of the House.

It is accordingly respectfully submitted that this Honorable Court should rehear our petition for certiorari and upon such rehearing should issue the writ.

Respectfully submitted,

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CERTIFICATE

I, counsel for the petitioner herein, do hereby certify that the foregoing petition for rehearing of this cause is presented in good faith and not for delay.

VERNON E. WEST,
Corporation Counsel, D. C.

December 3, 1947